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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,722	10/08/2003	Peter B. Lockhart	163P015	6702

7590 01/10/2008
George R. McGuire, Bond Schoeneck & King, PLLC
One Lincoln Center
Syracuse, NY 13202

EXAMINER

KISH, JAMES M

ART UNIT	PAPER NUMBER
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3737

MAIL DATE	DELIVERY MODE
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01/10/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/681,722	Applicant(s) LOCKHART ET AL.	
	Examiner James Kish	Art Unit 3737	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 34-48 is/are allowed.
- 6) ☐ Claim(s) 1,2,16-18 and 20 is/are rejected.
- 7) ☒ Claim(s) 3-15, 19, 21-33 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 1-48 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 16-18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sliwa, Jr. et al. (US Patent No. 5,749,364) in view of Mackinnon et al. (US Patent No. 6,546,272). Sliwa discloses a method of mapping fluid pressure information within a living body utilizing changes in acoustic behavior of microbubbles. It is also possible to use this information to assess the health of tissue (see Abstract). High frequency sound waves are applied to the region containing the microbubbles and an acoustic spectrum returned from the region (to a detector). A fluid parameter is determined in response to at least one characteristic of the acoustic spectrum (column 3, lines 29-40). The parameter-related information is displayed in at least 2 dimensions (column 4, lines 56-63). Also, see column 3, line 65 through column 4, line 11 for discussion on evaluation of the health of bodily tissue. Sliwa uses an ultrasound transmitter to create the ultrasound wave. However, Mackinnon teaches an apparatus

for in vivo imaging of internal organs. In one technique, a laser (with a focused beam; column 5, lines 33-35) is directed into tissue to create a microbubble of gas or plasma. When the bubble collapses, an ultrasound pulse is generated which is measured by a piezoelectric crystal detector (column 5, line 65 through column 6, line 2). Therefore, it was known in the art at the time the invention was made that a laser is capable of creating both microbubbles and ultrasonic waves that can be detected. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a laser, as taught by Mackinnon, either in combination with or as an alternative to an ultrasound emitter to cause an acoustic wave associated with a microbubble to propagate in a volume of interest and be detected and analyzed to evaluated parameters of the surrounding environment, as disclosed by Sliwa, in order to remove the need of prefabricating microbubbles using polymers (Sliwa: column 1, lines 37-42).

Mackinnon states that OCT has been well demonstrated in vitro on tissue samples and in vivo on easily accessed external organs such as the skin, teeth and eyes (column 1, lines 39-41).

Allowable Subject Matter

Claims 3-15, 19 and 21-33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 34-48 are allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Kish whose telephone number is 571-272-5554. The examiner can normally be reached on 8:30 - 5:00 ~ Mon. - Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JMK

